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1 **David J. Hollander, OSB #782452**
2 Hollander, Lebenbaum & Gannicott
3 1500 SW First Avenue, Suite 700
4 Portland, Oregon 97201-5825
5 Telephone: (503) 222-2408
6 Facsimile: (503) 222-0659
7 E-mail: david@hollanderlaw.com

5 Attorneys for Plaintiff

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IN THE UNITED STATES DISTRICT COURT

12 FOR THE DISTRICT OF OREGON

11 PORTFOLIO AND DIVISION

12 JANET HOI MCGREN Case No. : 2

12 JANET HOLMGREN Case No : 3:10-CV-369-HA

13 Plaintiff

TEMPORARY RESTRAINING ORDER

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CITY OF OREGON CITY.

Defendant

Pursuant to ORCP 65(b) this matter was heard by the Court ex parte on July 8, 2010.

19 Having reviewed the submissions of Plaintiff, the Court finds that:

1. Plaintiff has submitted credible evidence that there is a justiciable controversy about

²¹ whether James Birch violated the law by monitoring Plaintiff's privileged and private email.

22 communications in order to gain unfair advantage in this litigation.

2. Plaintiff has submitted credible evidence that Mr. Birch did so using the network

— owned by Defendant Oregon City and also through his home network.

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1 3. Plaintiff has submitted credible evidence that Mr. Birch has tried to hide his access to

2 Plaintiff's privileged and private email account by marking Plaintiff's emails as unread.

3 4. Plaintiff has submitted credible evidence that Mr. Birch has some computer expertise

4 and he is likely to try to destroy, tamper or otherwise alter evidence that is critical to Plaintiff's

5 case if he is provided with notice.

6 5. Accessing a person's private email is a criminal act under ORS 165.543 and 18 USC

7 § 2511.

8 6. Plaintiff has the right to examine the computers and hard drives in question pursuant

9 to FRCP 34.

10 7. Plaintiff will likely sustain immediate and irreparable harm if Defendant Oregon City

11 provides notice to Birch or Birch otherwise learns of these proceedings.

12 8. It is in the public interest that Plaintiff have the opportunity to examine the computers

13 and hard drives without alteration.

14 9. It is not in the public interest to obstruct Plaintiff's right to conduct discovery

15 under FRCP 34.

16 For the forgoing reasons the Court concludes that it should issue a Temporary

17 Restraining Order without notice as follows:

18 Defendant Oregon City, its officers, counsel, agents, employees and those acting in

19 concert with them to:

20 1. Preserve the hard drive or drives of certain computers owned by Defendant located in

21 *Office #3* Mr. Birch's and the sign room at Oregon City's facility located at 122 S. Center Street, Oregon

22 City, Oregon (hereinafter computers A & B) *(until copies are made)*.

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until copies of these

2. Ensure that James Birch has no access to computer A or B any ~~other computer or~~
1 ~~Computer hard-drives are made off 7-9-2010~~
2 ~~network owned by Defendant.~~

3. Preserve all records of computer use by James Birch from June 1, 2009 through the
4 present time. ~~off 7-9-2010~~

5 ~~To the extent practicable given the date and nature of this hearing~~
6 4. Preserve all records of access through Defendant Oregon City's network to a certain
7 ~~existing as of today~~
8 AOL email account with the email address of "Jfannyru@aol.com".

9 ~~B and retain such copies until Plaintiff has had the opportunity~~
10 ~~To inspect the hard drives under procedures to be agreed upon by the parties.~~
11 The Court further orders that James Birch, his agents, attorneys and those acting in ~~BB~~
12 concert with them to immediately:

13 1. Cease and desist from accessing the AOL email account with the email address of
14 "jfannyru@aol.com" or any other email account owned or used by Plaintiff.

15 2. Refrain from accessing any computer or network owned by Defendant Oregon City
16 including but not limited to computers A and B.

17 3. Preserve all written and digital records of access through Defendant Oregon City's
18 network and computers to a certain AOL email account with the email address of
19 "Jfannyru@aol.com" or any other address owned or used by Plaintiff.

20 4. Preserve all records of access through his network, home computer or notebook to a
21 certain AOL email account with the email address of "jafannyru@aol.com" or any other address
22 owned or used by Plaintiff. ~~off bring to the same cause hearing before Judge Hargrave~~

23 5. Preserve and ~~immediately turn over to counsel for Defendant~~ copies of all printouts of
24 any and all emails obtained from a certain AOL email account with the email address of
25 "jfannyru@aol.com" or any other address owned or used by Plaintiff.

bring to the Show cause hearing before Judge Haggerty on 7/15/2010

1 6. Preserve and immediately turn over to counsel for Defendant, the hard drives of all

2 computers owned or used by him from June 1, 2009 to the present time.

3 7. Turn over to counsel for Plaintiff all copies of communications between Plaintiff and

4 her lawyer. *as of 7-15-2010*

5 *Judge Haggerty determines there is no need for Plaintiff*

6 Plaintiff shall post security in the amount of _____.

7 *to post a bond.*

8 This Temporary Restraining Order shall remain in effect until 3 PM July 15, 2010.

9 at which time Judge Haggerty will conduct a Show cause hearing.

10 Dated at Portland, Oregon this 15 day of July, 2010 at 4:45 PM M. in Courtroom

11 *13A of Multnomah
U.S. Courthouse.
1000 SW 3rd Ave.*

12 *Judge Haggerty*
13 Ancer L. Haggerty
14 US District Court Judge

15 *Portland, OR
97204*

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*The Court directs James P. Birch to appear before
Judge Haggerty on July 15, 2010, @ 3:00 P.M. to show
cause why this order should not be continued.*

*August 10
U.S. District Judge*